IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :
THE HONOURALE MR.JUSTICE P.R.RAMAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

OP.No. 36040 of 2002(M)

PETITIONER:

K.VASUDEVAN, PROPRIETOR,
KAMALA TIMBER & SAW MILLS, AYANIMOODU,
POTHENCODE, TRIVANDRUM.

BY ADV. SRI.E.P.GOVINDAN
SRI.P.VISWAMBHARAN

RESPONDENTS:
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1. INTELLIGENCE OFFICER, SQUAD NO.II,
COMMERCIAL TAXES, TRIVANDRUM.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY, TAXES DEPARTMENT,
GOVT. SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.60940/2002 IN OP.NO.36040/2002

Dismissed

24/5/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE NOTICE ISSUED BY THE IST RESPONDENT DTD. 15/12/1998.

EXT.P2 TRUE COPY OF THE REPLY DTD. 4/1/1999 FILEDL BY THE PETITIONER.

EXT.P3 TRUE COPY OF THE ORDER NO.B1/1674/98 DTD. 15/5/1998 OF THE DY.COMMISSIONER, COMMERCIAL TAXES, TRIVANDRUM.

EXT.P4 TRUE COPY OF TE ORDER IN T.A.367 & 368/98 DTD. 8/12/2000 OF THE STAT, TRIVANDRUM.

EXT.P5 TRUE COPY OF THE NOTICE DTD. 18/11/2002 OF THE IST RESPONDENT.

EXT.P6 TRUE COPY OF THE EX TRACT OF THE CASH BOOK.

P.R.RAMAN, J.

O.P.NO.36040 OF 2002

Dated this the 24th day of May, 2007

JUDGMENT

Petitioner seeks to quash Ext.P5 which is a notice issued under Section 45-A of the K.G.S.T. Act. Petitioner was earlier served with a notice under date 15/12/1998 to which the petitioner submitted his reply in January, 1999. But nothing was done by the Intelligence Officer for a period of three years and in the year 2002 he issued another notice under date 18/11/2002 proposing to impose a penalty of Rs.4,07,133/- for the year 1992-93 and Rs.3,48,473 for the year 1993-94 on the ground that he has not filed any return of certain amounts which are alleged to be unaccounted sales for these years in question. In this connection, the petitioner would submit that the proceedings initiated against him is actuated by mala fides. Petitioner in this regard contends that the assessment for the years 1992-93 and 1993-94 was completed by the Assessing Officer, which was suo motu revised by the Deputy Commissioner on the self-same ground, which was set aside by the Tribunal in T.A.Nos.367 and 368/98, which is produced as Ext.P4 in this original petition. It is the specific contention of the petitioner that the Tribunal has entered a positive finding that there is absolutely no

materials on record to show that the orders of assessment are vitiated so as to invoke Section 35 of the Act and since there are no irregularities in the orders of assessment and no escapement of turnover was found from the records of assessment so as to hold that the assessments relating to the assessment years are prejudicial to the revenue. After perusing the grounds of appeal and after hearing the parties, the Tribunal considered various submissions. In paragraph 7 of the order the Tribunal observed that there is no valid materials before the Deputy Commissioner to invoke the powers vested on him under Section 35 of the KGST Act. In paragraph 8 it is stated that there is no evidence on record to show that K.Vasudevan is the Proprietor of Vikil Traders, Puthencode. Proprietorship cannot be presumed. At the same time K.Vasudevan is the Proprietor of Kamala Timber and Saw Mills, Puthencode as revealed from the records. There is also no evidence to show that cheques were drawn in favour of the appellant and that the appellant encashed the entire cheques by the above society. Thus the Tribunal entered a finding that the petitioner had no connection with Vikil Traders and the petitioner cannot therefore be compelled to disclose the turnover alleged to have been entered into by Vikil Traders as that of the petitioner and on that count no penalty could be imposed. Thus these findings are in favour of the assessee. The finding of the Tribunal as noticed above has become

final. Then how the petitioner could be imposed a penalty for non-inclusion of those turnover of business allegedly done by Vikil Traders with which he has absolutely no business connection, a point strongly mooted by the counsel appearing for the petitioner certainly is a matter which cannot be brushed aside. But what is issued being only a notice, it is only appropriate that the petitioner could place on records these materials and file a detailed objection before the Intelligence Officer, whereupon the Intelligence Officer shall bestow consideration to such contentions raised, in the light of the finding entered into by the Appellate Tribunal and take a decision accordingly.

2. In this view of the matter, I refrain from quashing Ext.P5 at this stage. It is open to the petitioner to file an additional reply to Ext.P5 within a period of three weeks from the date of receipt of a copy of this judgment, whereupon the Intelligence Officer shall consider the same in accordance with law, after affording an opportunity of being heard to the petitioner.

Original Petition is disposed of as above.

P.R.RAMAN,
Judge.

kcv.

P.R.RAMAN, J.

O.P.NO.36040 OF 2002

JUDGMENT

24th May, 2007